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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* BARRY JAY WEBER and KERRY WAYNE CALVERT

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Appeal 2009-006708
Application No. 09/712,887[1]
Technology Center 2400

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Before JOSEPH F. RUGGIERO, MARC S. HOFF, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

[1] The real party in interest is Thomson Licensing Inc.

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 4-16 and 26.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention concerns a system for processing and/or providing broadcast multimedia content and targeted advertisements to multiple different users over a network (Spec. 2). The invention includes a processor to concurrently provide broadcast multimedia program content to the system, a scheduler to schedule time or insertion of a designated advertisement into selected content, and a multiplexer operable to provide multiple users with individualized composite program datastream by performing, in parallel for multiple users, insertion of a designated advertisement and coupling of the composite program datastream formed after advertisement insertion to each corresponding user (Spec. 7, 10, 13).

Claim 13 is exemplary of the claims on appeal:

13. A system for processing broadcast multimedia program content and advertisements to provide a composite program datastream having multimedia data content and user targeted advertisements to multiple different users, comprising:

a processor operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content to the system, said broadcast multimedia program content comprises at least one of (a) streamed audio data, (b) streamed video data, (c) voice representative data, (d) voicemail data, and (a) a radio or video broadcast;

a scheduler operable to schedule time of insertion of a designated advertisement into selected broadcast multimedia program content, said scheduler being configured to receive and pre-cache advertisements from multiple sources to provide candidate advertisements for selection of said

[2] Claims 1-3 and 17-25 have been cancelled.

designated advertisement for insertion in said selected multimedia program content at a scheduled insertion time;

a multiplexer operable to provide multiple users with individualized composite program datastream by performing in parallel for multiple users.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

| | | |
|---|---|---|
| Kostreski | US 5,734,589 | Mar. 31, 1998 |
| Monteiro | US 5,778,187 | Jul. 7, 1998 |
| Srinivasan | US 6,411,992 B1 | Jun. 25, 2002 |

Claims 4-14, 16, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Monteiro in view of Srinivasan.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Monteiro in view of Srinivasan and Kostreski.

Throughout this decision, we make reference to the Appeal Brief ("App. Br.," filed May 8, 2008) and the Examiner's Answer ("Ans.," mailed July 25, 2008) for their respective details.

## ISSUES

Appellants argue that insertion of advertising at the Playback/Control Workstation is not contemplated to involve scheduled pre-storage of the advertising stream (App. Br. 6). After conceding that the advertisements in Monteiro "do need to be stored in some fashion prior to insertion," Appellant argues that Monteiro's "Network Control Center is focused on caching during preparation of the content stream rather than pre-caching, i.e., caching prior to arrival of the content stream" (App. Br. 7). Lastly, relying on the prior argument that Monteiro inserts advertising in real-time

at the Playback/Control Workstation, Appellants argue that "[i]f the advertising is inserted in real-time, there is no need for a scheduler" (App. Br. 7).

Appellants' contentions and the Examiner's findings present us with the following issues:

1. Does Monteiro teach a scheduler operable to schedule time of insertion of a designated advertisement?

2. Does Monteiro teach a scheduler being configured to receive and pre-cache advertisements from multiple sources to provide candidate advertisements for insertion in a selected multimedia program?

## FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

*Monteiro*

1. Monteiro teaches that "[r]eal-time insertion of paid commercial advertising takes place at the Playback/Control Workstations and the resulting integrated audio stream is delivered to the Primary Servers" (col. 4, ll. 32-35).

## PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 405

(2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

## ANALYSIS

### CLAIMS 4-14, 16, AND 26

We select claim 13 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

We are not persuaded by Appellants' arguments, summarized *supra*. We agree with the Examiner that pre-caching may fairly be interpreted as caching prior to insertion of the advertisement (Ans. 10). Appellants do not cite to support in the Specification for their definition of "pre-caching" – "caching prior to arrival of the content stream" -- expressed in the Appeal Brief. (We note that the term "pre-caching" does not appear in Appellants' Specification.) Monteiro teaches that "[r]eal-time insertion of paid commercial advertising takes place at the Playback/Control workstations and the resulting integrated audio stream is delivered to the Primary Servers" (FF 1). Taking this teaching in combination with Appellants' admission that Monteiro's advertisements need to be stored in some fashion prior to their insertion into content (App. Br. 7), we agree with the Examiner's finding

that Monteiro teaches pre-caching within the meaning of representative claim 13.

With respect to "a scheduler operable to schedule time of insertion" of an advertisement, we agree with the Examiner that real-time ad insertion is still time-oriented (Ans. 11). We adopt the Examiner's finding that Monteiro (inherently) teaches "a mechanism within the Playback/Control Workstation … that indicates the proper time to insert an advertisement" (Ans. 11). We therefore agree with the Examiner that Monteiro teaches a "scheduler" as claimed.

Because we find that Monteiro teaches the scheduler and "pre-caching" functionality recited in representative claim 13, we find that the Examiner did not err in rejecting representative claim 13. Accordingly, we will sustain the Examiner's rejection of claims 4-14, 16, and 26 under § 103 as unpatentable over Monteiro in view of Srinivasan.

CLAIM 15

Appellants state that the patentability of claim 15 will stand or fall with the patentability of claim 13 (App. Br. 8). As a result, we will sustain the § 103 rejection of claim 15 for the reasons expressed with respect to claim 13, *supra*.

## CONCLUSIONS

1. Monteiro teaches a scheduler operable to schedule time of insertion of a designated advertisement.

2. Monteiro teaches a scheduler being configured to receive and pre-cache advertisements from multiple sources to provide candidate advertisements for insertion in a selected multimedia program.

ORDER

The Examiner's rejection of claims 4-16 and 26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD